

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

FILED
U.S. DISTRICT COURT
AUGUSTA DIV.
2019 NOV 21 PM 2:44

TRACEY ANTONIO ATTAWAY,

Petitioner,

v.

Warden AIMEE SMITH,

Respondent.

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CLERK M. Akins
SO. DIST. OF GA.

CV 118-133

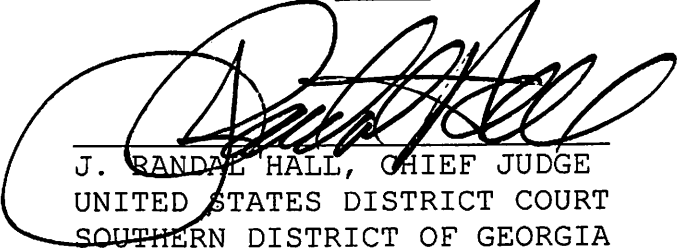
O R D E R

Before the Court are Mr. Attaway's motion for a certificate of appealability (Doc. 25) and motion for leave to appeal *in forma pauperis* ("IFP") (Doc. 27). The Court previously decided both motions in its Order adopting United States Magistrate Judge Brian K. Epps's Report and Recommendation. (Order, Doc. 19.) The Court **DENIES AS MOOT** Mr. Attaway's motion for a certificate of appealability (Doc. 25) because the Court already denied it and informed Mr. Attaway that he could next "seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22." (Order, at 1-2, 2 n.1 (quoting Rule 11(a) to the Rules Governing Section 2254 Proceedings).) It appears Mr. Attaway filed the present motion for a certificate of appealability with the Eleventh Circuit Court of Appeals, but the Circuit Court transferred it to this Court. (See Letter from Eleventh Circuit Clerk of Court, Doc. 25-1.) Rather than directing Mr. Attaway to

refile the motion with the Circuit Court, the Court **DIRECTS** the Clerk to **FORWARD** this Order and Mr. Attaway's motion for a certificate of appealability (Doc. 25) back to the Eleventh Circuit Court of Appeals.

The Court now turns to Mr. Attaway's motion to appeal IFP. The Court previously stated that "because there are no non-frivolous issues to raise on appeal, an appeal would not be taken in good faith, and Petitioner is not entitled to appeal [IFP]." (Order, at 2 (citing 28 U.S.C. § 1915(a)(3)).) The Court liberally construes Mr. Attaway's present motion to appeal IFP as a motion for reconsideration. Mr. Attaway, however, fails to raise any grounds justifying reconsideration; thus, Mr. Attaway's motion to appeal IFP (Doc. 27) is **DENIED**.¹

ORDER ENTERED at Augusta, Georgia, this 21ST day of November, 2019.



J. RANDAL HALL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

¹ The Clerk's transmittal of this Order to the Eleventh Circuit in conjunction with the motion for a certificate of appealability suffices to satisfy the Clerk's responsibility under Federal Rule of Appellate Procedure 24(a)(4) to notify the court of appeals of this Court's denial of Mr. Attaway's motion to appeal IFP.